

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23060
of Palle H. Andersen
to Appropriate from Little Salmon
Creek, Big Salmon Creek and Two
Unnamed Creeks in Mendocino County

Decision 1360

DECISION APPROVING APPLICATION IN PART

Palle H. Andersen having filed Application 23060 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of Application

1. Application 23060, as amended, is for a permit to appropriate for irrigation, domestic, and recreational purposes:

a. 0.077 cubic foot per second (cfs) by direct diversion from January 1 to December 31 of each year, and 100 acre-feet per annum (afa) by storage from October 1 of each year to June 1 of the succeeding year from Little Salmon Creek in Mendocino County.

The point of diversion is to be located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 28, T16N, R17W, MDB&M.

b. 0.232 cfs by direct diversion from January 1 to December 31 of each year, and 100 afa by storage from October 1 of each year to June 1 of the succeeding year from Big Salmon Creek in Mendocino County. The point of diversion is to be located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 33, T16N, R17W, MDB&M.

c. 100 afa by storage from October 1 of each year to June 1 of the succeeding year from an unnamed creek tributary to Little Salmon Creek in Mendocino County. The point of diversion is to be located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 28, T16N, R17W, MDB&M.

d. 100 afa by storage from October 1 of each year to June 1 of the succeeding year from an unnamed creek tributary to Albion River in Mendocino County. The point of diversion is to be located within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 28, T16N, R17W, MDB&M.

The total quantity by storage from all sources is not to exceed 100 afa.

Disposition of Protests

2. A protest to this application was filed by the Department of Fish and Game; the Department authorized dismissal of the protest subject to the inclusion of a specified permit

term pertaining to release of water for the protection of fishlife. The applicant agreed to the term so the protest of Fish and Game is dismissed and the permit term agreed upon will be included in any permit issued.

3. A protest was filed by Laird Hooper against the proposed diversion from Little Salmon Creek, claiming that it would interfere with his right to water required for use on approximately three and one-half acres of riparian land. The protestant is not presently making use of any water from Little Salmon Creek; if and when he develops his property, the quantity of water that will be reasonably necessary for use on three and one-half acres (see Section 657, Title 23, California State Administrative Code) will be only a fraction of the flow of the stream that the applicant will be required to release pursuant to his agreement with the Department of Fish and Game. Also, all permits are issued subject to vested rights, so if the protestant has valid riparian rights, and develops riparian uses, a permit issued to the applicant will authorize diversion of water only at such times and in such amounts as will not interfere with protestant's rights. It is common knowledge that the precipitation is relatively heavy in the area in question; therefore, it is reasonable to assume that the flow in Little Salmon Creek will rarely, if ever, decrease to the level where there is no water available for the applicant, over and above the possible needs of the protestant. Applicant is

entitled to appropriate the water that reasonably can be expected to be available except on rare occasions.

Amount to be Appropriated

4. Applicant proposes to build a reservoir on each of two unnamed creeks, each with a capacity of not to exceed 50 acre-feet, in which will be stored the flow of the respective unnamed creeks and water diverted and conveyed from Little Salmon Creek and Big Salmon Creek. The permit should authorize diversion to storage of not to exceed 100 afa from Little Salmon Creek, 100 afa from Big Salmon Creek and 50 afa from each of the two unnamed creeks (because of the limiting capacity in the reservoirs in these two latter creeks) with a limit of 100 afa from all sources.

5. Unappropriated water is available to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

6. The intended use is beneficial.

Conclusions

From the foregoing findings, the Board concludes that Application 23060 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Application 23060 and all

relevant information on file therewith, particularly the report of field investigation made June 19, 1969.

ORDER

IT IS HEREBY ORDERED that Application 23060 be, and it is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantities which can be beneficially used and shall not exceed:

a. 0.077 cubic foot per second (cfs) by direct diversion from January 1 to December 31 of each year and 100 acre-feet per annum (afa) by storage to be collected from about October 1 of each year to about June 1 of the succeeding year from Little Salmon Creek in Mendocino County.

b. 0.232 cfs by direct diversion to be diverted from January 1 to December 31 of each year and 100 afa by storage to be collected from about October 1 of each year to about June 1 of the succeeding year from Big Salmon Creek in Mendocino County.

c. 50 afa by storage to be collected from an unnamed creek tributary to Little Salmon Creek in Mendocino County from about October 1 of each year to about June 1 of the succeeding year.

d. 50 afa by storage to be collected from an unnamed creek tributary to the Albion River in Mendocino County from about October 1 of each year to about June 1 of the succeeding year.

The total amount of water appropriated by storage under this permit shall not exceed 100 afa and by storage and direct diversion shall not exceed 193 afa.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. For the protection and preservation of fish-life, permittee shall release the following quantities of water or the natural flow, whichever is less:

<u>Period</u>	<u>Big Salmon Creek Diversion Point</u>	<u>Little Salmon Creek Diversion Point</u>
December 1 through March 31	5 cfs	5 cfs
April 1 through November 30	0.5 cfs	0.25 cfs

The provisions of this paragraph are based on a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amounts of water named herein are either adequate or required for the maintenance of fishlife.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

4. Actual construction work shall begin on or before September 1, 1970 and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1972.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

7. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.

8. All rights and privileges under this permit, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

9. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code.

No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

11. Permittee shall install and maintain an outlet pipe of adequate capacity in his dams as near as practicable to the bottom of the natural stream channels, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoirs or collected in the reservoirs during and after the current storage season may be released into the downstream channels to the extent necessary to satisfy downstream prior rights.

12. In accordance with the requirements of Water Code Section 1393, if a reservoir with an impounding capacity of 50 acre-feet or more is constructed, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

13. If the dams will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction shall not be commenced until the Department has approved plans and specifications.

14. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the rights acquired under this permit by direct diversion and any other permit to appropriate water by direct diversion for use on the same land shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the riparian right or the total of the permit rights to appropriate water by direct diversion.

15. If the place of use is subdivided and the water appropriated under this permit used to supply water to the various parcels of the subdivision, this permit shall be assigned to a mutual water company or some other organization satisfactory to the State Water Resources Control Board, capable of supplying the place of use on a continuous, permanent basis.

Adopted as the decision and order of the State
Water Resources Control Board at a meeting duly called and
held at Sacramento, California.

Dated: May 21, 1970

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

RONALD B. ROBIE
Ronald B. Robie, Member

W. W. ADAMS
W. W. Adams, Member